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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GLEN E. FRIEDMAN, Plaintiff, vs. THIERRY GUETTA a/k/a MR. BRAINWASH, and DOES 1 through 10, inclusive, Defendants. AND RELATED COUNTER-CLAIM.	Case No. CV10-0014 DDP (Jcx) **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT THIERRY GUETTA'S MOTION TO QUASH AND/OR MODIFY SUBPOENA TO NON-PARTY PAYPAL, INC. AND REQUEST FOR ATTORNEY'S FEES IN THE AMOUNT OF $2,275** **[DISCOVERY MATTER]** **HON. JACQUELINE CHOOLJIAN, MAGISTRATE JUDGE** **DATE: January 25, 2011** **TIME: 9:30 a.m.** **CTRM: 20, 3rd Floor** Discovery Cut-off: April 8, 2011 Pre-trial Conf: July 25, 2011 Trial: August 16, 2011

SUPPLEMENTAL MEMORANDUM

I. INTRODUCTION

Plaintiff Glen E. Friedman ("Friedman") has subpoenaed all records from non-party PayPal, Inc. ("PayPal") that show pertain to all payments Defendant Thierry Guetta ("Guetta") and his companies received for the past five years even though such information has no possible relevance and violates Guetta's privacy rights. Guetta has already produced all documents in his possession pertaining to the sale of any items incorporating the subject photograph of Run-DMC ("Photograph") taken by Friedman. Not satisfied with these documents, Friedman's counsel issued the subpoena to PayPal for records pertaining to not only sales of items incorporating the Photograph and Run-DMC, but also every single record pertaining to payments received by Guetta and his companies for the last five years. The only justification provided for obtaining all these records is that they are relevant to damages. The request is in no way tailored to be limited information relevant to Friedman's claims or the subject matter of this litigation. For this reason, the subpoena should be quashed (or at least modified so that it is limited to documents relevant to the issues raised in this action).

II. GUETTA AGREED TO ALLOW THE PRODUCTION OF RELEVANT DOCUMENTS SOUGHT BY REQUEST NOS. 1, 4, 7 AND 10

Contrary to Friedman's assertions that Guetta is attempting to withhold relevant sales information, Guetta has indicated his willingness to allow PayPal to produce documents responsive to the requests concerning the sales Button ID and Item ID numbers (Document Request Nos. 1, 4, 7 and 10), which correlate with the print Guetta sold that incorporates Photograph, so long as private customer information is redacted. Friedman has not offered any reason why the disclosure of the third-party customer information is necessary. The only justification offered for discovery of any of the documents sought by the subpoena is for purposes of calculating damages. The third-party customer information will not provide any further information regarding damages and, at a minimum, the subpoena should be modified to prevent such disclosure.

III. THE REQUESTS "FOR ANYTHING RELATING TO RUN DMC" ARE OVERBROAD (REQUEST NOS. 2, 5, 8 AND 11)

Document Request Nos. 2, 5, 8 and 11 seeks documents pertaining to any payments Guetta and his companies received "for anything relating to Run DMC." Guetta's counsel was informed that PayPal is unable to determine what payments relate to Run DMC. Moreover, the requests are overbroad and seek documents that are not relevant to the extent they seek documents that are not related to the sale of items Guetta sold incorporating the Photograph. For example, if Guetta sold a compact disc of Run DMC's music using PayPal, the record of that sale is not relevant to damages (or any other issue) in this lawsuit, but the records of that sale would be responsive to the request. Accordingly, as Request Nos. 2, 5, 8 and 11 do not seek any relevant documents not already requested by Request Nos. 1, 4, 7 and 10 (to which Guetta only seeks redaction of private third-party customer information), the requests should be quashed.

IV. DOCUMENT REQUEST NOS. 3, 6, 9 AND 12 ARE VASTLY OVERBROAD, SEEK DOCUMENTS THAT ARE NOT EVEN REMOTELY RELEVANT AND THAT CONTAIN PRIVATE INFORMATION

A. The Documents Sought Are Not Relevant

Parties have the right to discover "any nonprivileged matter that is relevant to any party's claim or defense." However, "good cause" and leave of Court are required for discovery of the broader category of information that is "relevant to the subject matter involved in the action." FRCP 26(b)(1). Therefore, discovery managed by the parties must be limited to the claims and defenses at issue in the action. The purpose of this rule is "to involve the court more actively in regulating the breadth of sweeping or contentious discovery." Adv. Comm. Notes to 2000 Amendment to FRCP 26(b)(1).

As explained by the United States Supreme Court in Hickman v. Taylor, 329 U.S.

495, 507-508 (1947), discovery "has ultimate and necessary boundaries," including limitations that "come into existence when the inquiry touches upon the irrelevant ..." "While the standard of relevancy [in discovery] is a liberal one, it is not so liberal as to allow a party 'to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.' " In re Fontaine, 402 F.Supp. 1219, 1221 (E.D.N.Y.1975) quoting Broadway & Ninety-Sixth St. Realty Co. v. Loew's Inc., 21 F.R.D. 347, 352 (S.D.N.Y.1958); Food Lion, Inc. v. United Food & Comm'l Workers Int'l Union, AFL–CIO–CLC, 103 F.3d 1007, 1012–1013 (DC Cir. 1997). See also Mack v. Great Atlantic & Pac. Tea Co. 871 F.2d 179, 187 (1st Cir. 1989). Courts have incorporated relevance as a factor when determining motions to quash a subpoena. Goodyear Tire & Rubber Co. v. Kirk's Tire & Auto Servicenter, 211 F.R.D. 658, 662 (D.Kan. 2003). "The party issuing the subpoena must demonstrate that the information sought is relevant and material to the allegations and claims at issue in the proceedings." Night Hawk Ltd. v. Briarpatch Ltd., L.P., 2003 WL 23018833, *8 (S.D.N.Y.2003).

Here, Document Request Nos. 3, 6, 9 and 12 seek documents pertaining to every single payment Guetta and his companies received in the past five years. Obviously, this field of discovery goes well beyond the claims and defenses asserted in this action. Moreover, the scope of the requests far exceeds the "relevant to the subject matter involved in the action" standard set forth in FRCP 26(b)(1), which requires "good cause" and a Court order. These requests would require the disclosure of documents not even remotely related to this action, such as those pertaining to the sale of any personal belongings or art works having nothing to do with the issues presented in this action. Friedman's lone statement that the documents are relevant to damages does not suffice as the requests are not limited to documents pertaining to damages.

In an effort to determine whether the avoiding the instant Motion to Quash was possible, Guetta's counsel contacted PayPal to see if production could be limited to the relevant documents sought by Request Nos. 1, 4, 7 and 10. Guetta's counsel was told that PayPal was unable to search for records based on the Button ID and Item ID numbers.

Friedman now attempts to bootstrap the legitimacy of the requests for five years of payment records based on this statement, despite the fact that the neither party was aware that PayPal would take such a position prior to the issuance of the subpoena. Of course, Guetta's counsel is unable to offer any insight into PayPal's ability to search for records beyond what was explained by a PayPal representative and, again, Guetta is willing to limit the requests to the relevant documents (sales records of items incorporating the Photograph). That PayPal indicated that it was unable to search by Button ID and Item ID does not create a justification for the production of records pertaining to any payments Guetta and his companies received for the past five years. Friedman's contention that he should be allowed to obtain all of Guetta's payment records and sift through them to determine "which sales relate to the images at issue in this case" is absurd, flies in the face of the standard for relevance and demonstrates that records are being sought that are not related to the images at issue in this action.

Simply stated, Request Nos. 3, 6, 9 and 12 seek documents that are not relevant to this action and the requests must therefore be quashed.

B. The Documents Sought Are Private

"Federal Courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests." Soto v. City of Concord, 162 F.R.D. 603, 616 (N.D.Cal.1995). Federal courts generally treat financial information as private. See Sheets v. Salt Lake County, 45 F.3d 1383, 1388 (10th Cir. 1995); Doe v. City of New York, 15 F.3d 264, 267 (2nd Cir.1994); Denius v. Dunlap, 209 F.3d 944, 957-958 (7th Cir. 2000); Bradley Trust v. Zenith Capital LLC, 2006 U.S. Dist. LEXIS 21671, *6 (N.D. Cal. 2006). "Resolution of a privacy objection ... requires a balancing of the need for the information sought against the privacy right asserted." Keith H. v. Long Beach Unified School Dist., 228 F.R.D. 652, 657 (C.D. Cal 2005).

Here, Friedman has absolutely no need for payment information that does not pertain to sales of prints incorporating the Photograph. Accordingly, the Court must favor

Guetta when balancing the parties' competing interests and the requests must be quashed.

V. CONCLUSION

For the foregoing reasons, the subpoena should be quashed or modified so as to be limited to the production of documents that are relevant in this action.

Dated: January 11, 2011 LAW OFFICES OF ALAN S. GUTMAN

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John Juenger
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THIERRY GUETTA a/k/a MR. BRAINWASH